IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3309 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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BHARATSINH NARSINH ZALA - Petitioner(s)

Versus

CHIEF CONSERVATOR OF FOREST & 6 - Respondent(s)

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Appearance :

MR RJ OZA for the Petitioner
MS REETA CHANDARANA, A.G.P. for Respondent No. 1,2 and 3.
RULE SERVED for Respondent(s) : 4, 5 and 7.
MR VM TRIVEDI for Respondent No. 6.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/03/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged his non promotion to the post of Forester, though his juniors were promoted from time to time.

2. In the nutshell, facts leading to the present petition are, that the petitioner was discharging his duty as a Forest Guard from 1974 onwards. As per his seniority his turn for being considered for promotion to the next higher post of Forester had arrived in the year 1982-83. Several persons who were junior to the petitioner were promoted, whereas the petitioner was not given such promotion which has given rise to the present petition. It may be noted that eventually, the petitioner came to be promoted as Forester by order dated 16.10.1992. Thus, the controversy in the present petition survives, whether the petitioner should get deemed date of promotion when he was superseded and his juniors were promoted.

2.1 The case of the petitioner is that his service record was good and he deserves promotion, which was wrongly denied to him. In the petition, the petitioner has stated that except for one adverse remarks for the year 1977-78, there were no other remarks communicated to the petitioner which can be termed as adverse. That the petitioner had preferred representation / appeal against such adverse remarks,

but the same had remained undecided. It is thus, the case of the petitioner that in absence of any adverse material against the petitioner in his service record, his non promotion was illegal.

3. In response to the notice issued by this Court, the respondents have filed replies. In affidavit-in-reply dated 20.07.2004, it has been stated *inter-alia* that the case of the petitioner was considered by the Departmental Promotional Committee convened in the year 1982. However, since the service record of the petitioner as Forest Guard was not good, he was not selected for promotion. It is further stated that the Selection Committee, which met in the year 1983 also did not select the petitioner for promotion due to adverse Confidential Reports. Subsequently, the D.P.C. in the year 1989 prepared select list, in which the petitioner was included. He was placed in the select list at Sr.No.65 and as per his turn he was eventually, promoted as a Forester by order dated 16.10.1992. It is further stated that criteria for promotion for the post of Forester is seniority-cum-merit. It may be noted that in the earlier affidavit-

in-reply filed by the respondents in December, 1987, it is stated that the criteria for promotion to the post in question is on the basis of pure merit and efficiency. With this aspect of the matter, however, we are not directly concerned presently.

3.1 Further affidavit-in-Sur rejoinder came to be filed by the respondent on 02.08.2004, in which it is stated inter-alia that there were adverse remarks in the service record of the petitioner for the years 1977-78, 1978-79 and 1979-80, on account of which he was denied promotion in the year 1982. It is further stated that such remarks were duly communicated to the petitioner. However, no appeal or representation has been received by the department from the petitioner, questioning such adverse remarks.

4. By filing affidavits the petitioner has raised following factual disputes. Firstly, it is stated in the petition that because of adverse remarks for the year 1977-78, the petitioner had made representation to the department which has remained undecided. Along with the petition, the petitioner has produced

representation dated 04.09.1984 in which there is reference of representation dated 30.11.1982. The representation dated 30.11.1982 is produced by the petitioner along with his further affidavit-in-rejoinder which is found at Page – 57 to the compilation. In the representation dated 30.11.1982, the petitioner has referred to appeal filed by him on 08.08.1978 against the communication of the adverse remarks for the year 1977-78.

4.1 The respondents have however denied having received any appeal or representation for any of the adverse remarks. The petitioner is not able to produce the appeal dated 08.08.1978. The Court had also summoned the original service record of the petitioner. Atleast in that file, no such appeal is found. Considering the totality of the materials on record, I find that it is not possible to discard the statement made on oath on behalf of the respondents suggesting that no appeal was received by the department. The adverse remarks of year 1977-78, therefore, has achieved finality.

5. Second factual dispute raised was with respect to adverse remarks for subsequent years 1978-79 and 1979-80. It can be seen that the case of the petitioner is that the same were not communicated to him. The respondents in their sur-rejoinder dated 02.08.2004 contended that such remarks were duly communicated to the petitioner at the relevant time. Along with the sur-rejoinder the respondents have also produced an acknowledgment dated nil from the petitioner, in token of having received sealed cover for the adverse remarks for the year 1978-79. The original of the said acknowledgment is to be found in the file made available by the learned Assistant Government Pleader also. With respect to question of communication of A.C.R. of the year 1978-79, therefore, there is sufficient material to hold, that the same was communicated to the petitioner but that the petitioner had not made any representation or appeal against the same. These remarks also therefore, cannot be discarded.

5.1 With respect to subsequent years of C.R.s, there is however, substance in the contention of the

learned Advocate for the petitioner. In the petition as well as in the subsequent pleading it has been the case of the petitioner that he was not served with any of such remarks. The respondents in sur-rejoinder dated 02.08.2004, have contended that such remarks were communicated to the petitioner. In support thereof what is produced is a communication of the immediate superior of the petitioner stating that such remarks have been communicated to him. There is no primary proof establishing the fact that the petitioner was actually served with such remarks. In addition, thereof at Annexure – R/3 (page 66 to the compilation), there is communication of the Range Forest Officer, Morbi dated 27.11.1987 made to the Deputy Conservator of Forest, in which it is stated that there is no written proof to show that adverse remarks in question have been communicated to the petitioner. Considering all these aspects of the matter, I find that at the relevant time, A.C.R.s for the year 1979-80 were not communicated to the petitioner. Additionally, I have also perused the adverse remarks in question. For the relevant period in the confidential record of the petitioner, in

answer to virtually all columns, the Reporting Officer has made remarks that his performance and conduct is good. The Reviewing Officer, however, has put a special remark in which it is stated “guarding of the forest and the beats is poor”. Subject to this observation, the Reviewing Officer agreed with the remarks made by the Reporting Officer. Thus, it would appear that without there being any additional material, the Reviewing Officer added the above remark which is apparently not in tune with the observations of the Reporting Officer, with which the Reviewing Officer also concurred. Considering this aspect of the matter and considering that such remarks were not communicated to the petitioner, as I have concluded hereinabove, such remarks cannot be taken into consideration for deciding the suitability of the petitioner for promotion.

6. It would therefore, appear that the case of the petitioner for promotion was turned down by the D.P.C. in the year 1982 and thereafter, in the year 1983 on the basis of adverse remarks contained in three successive years in his Confidential Report.

The remarks for the year 1977-78, 1978-79 though were validly taken into consideration, adverse remarks for the year 1979-80 in my view was taken into consideration contrary to law.

7. In the result, the respondents shall have to reconsider the petitioner for promotion by drawing review D.P.C. for the year 1982-83 considering the petitioner for promotion as on the said period discarding the A.C.R. of 1979-80. Such exercise be undertaken expeditiously and preferably within a period of three months from the date of receipt of a copy of this order. The result thereof shall be communicated to the petitioner.

8. To the above limited extent the petition succeeds. Rule is made absolute accordingly. No order as to costs.

[Akil Kureshi, J.]

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